CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139
TEL. 661-0400—0401-0402-0403-0404

RENT CONTROL BOARD
Alan L. Lefkowitz, CHAIRMAN
MEMBERS
Gerald Billow
Alfred Cohn
Lorraine Scott
Paul Watkins

March 13, 1974

MEMORANDUM

To: Cambridge City Councillors

From: J. Kenneth Griffin, Executive Director, Rent Control Board

Attached to this memorandum is my Report of the Rent Control Board which, hopefully, to your satisfaction, responds to four areas of inquiry made by the Council at its February 14, 1974 meeting.

Alan Lefkowitz, Chairman of the Rent Control Board, will respond by separate communication and address himself to the two ordinances proposed by Councillor Wylie and the additional orders introduced by Councillor Duehay.

Respectfully yours,

J. Kenneth Griffin
Executive Director

Enclosure

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REPORT OF THE RENT BOARD

March 1974

In reference to requests made by the City Council in their meeting on February 14, 1974 the Rent Board offers information on the items listed as 1-4 of the proposed order dated February 11, 1974.

(1) "Steps taken to ensure the return to tenants of rent overcharges approved by former Rent Control Administrator, William Corkery, which have been ruled by the Court to be illegal, and estimated aggregate of such charges and the number of landlords and tenants involved, including an analysis, by category of the numbers of tenants and landlords affected and of the size of the overcharge".

Attached to this report and made a part hereof is a chart indicating the effective date of the Corkery adjustments, the total increase granted on each effective date, the total number of buildings adjusted, the total number of units adjusted, and the total Corkery increases collectable from the effective date of the various increases through September 1972.

As a result of the District Court case of Ackerman v. Corkery decided March 3, 1972 the Rent Board commenced taking steps to ensure the return to tenants of rent overcharges approved by Mr. Corkery. It was Judge Haven Parker's decision in the Ackerman v. Corkery case that the increases given by Mr. Corkery were invalid.

On March 21, 1972 the Board decided to speak with the City Solicitor, Philip Cronin and seek clarification from the Courts as to the effects of the Ackerman decision.

On March 24, 1972 a memo to the staff read as follows:

> "(2) With respect to Ackerman v. Corkery the case will be appealed. The probable order of the Court is impossible to predict. However, if the decision in Ackerman v. Corkery is implemented all of Mr. Corkery's decisions will be invalidated and all rent levels of controlled units in Cambridge will be at the March 17, 1970 levels."

On March 30, 1972 the Board published a notice in the Cambridge Chronicle advising tenants on the rent due on April 1, 1972. A portion of the notice read as follows:

> "(2) If you received notice of a rent adjustment (Corkery Adjustment) you are advised that the Superior Court has told the Rent Control Board not to interfere with adjustments in rent made by the Rent Control Administration."
>
> "The District Court has found that these adjustments were illegal."
>
> "The Rent Board has petitioned the Supreme Judicial Court for clarification, and a hearing is scheduled for April 5, 1972. Until this matter is clarified the Rent Board does not expect to grant any Certificates of Eviction for non-payment of rent adjustments made by Administrator Corkery."
>
> "(3) Tenants and landlords are cautioned that whatever rent is paid and received on April 1, 1972, may be subject to retroactive adjustment by the courts."

It is important to note that when the Board published the notice advising landlords and tenants of the rent due April 1, 1972 the Rent Board was under a restraining order issued by Judge Tomasello of the Superior Court. Judge Tomasello restrained the Board from:

> (1) notifying landlords and tenants of the new roll back to July 10, 1971;
> (2) advising landlords and tenants of the acceptance of the new rent control; and
> (3) nullifying rent adjustments granted by Mr. Corkery.

In late April the Board published a notice similar to the notice published March 30, 1972 advising landlords and tenants on the rent due on May 1, 1972. Another similar notice was published for June 1, 1972.

As soon as the Supreme Judicial Court decided the Board's petition for Declaratory Judgement on the Corkery Adjustment issue the Board published a notice advising landlords and tenants on the rent due on July 1, 1972. A portion of the notice was as follows:

> "If you received notice of a rent adjustment, you are advised that the District Court has found that these adjustments were illegal. The Supreme Judicial Court has affirmed that decision. The rent adjustments made by Corkery are null and void. Therefore, the rent due is the legal rent paid for such unit for the rental period during which July 10, 1971 occured not including the amount of the monthly rental increase granted by Corkery. For the most part, the legal rent due on July 10, 1971 not including the amount of the monthly rental increase is the same rent paid for the rental period

during which March 17, 1970 occured."

On July 10, 1972 the Board received an opinion from the City Solicitor which it requested. The opinion stated, "In response to your request, I can confirm that in my opinion the recent decision of the Supreme Judicial Court does provide that rents collectable under the authority of adjustments granted by the Corkery Administration are subject to the tenants' rights to reimbursements. The rescript opinion, obviously, does not address the question with particularity which, in my opinion, leaves the Rent Control Board a good deal of flexibility to establish and administer the mechanism by which this result may be accomplished.

Upon publication of the notice informing landlords and tenants of the rent due July 1, 1972 and after receiving the opinion from the City Solicitor the Board commenced to develop a method which would ensure the return to tenants of rent overcharges approved by Administrator Corkery. However, the landlords involved in the Supreme Court case requested a re-hearing before the Court and the entry of the final decree was prevented. The final decree was entered September 5, 1972 allowing the Board to rely on the Supreme Court's decision.

However, on September 5, 1972 a restraining order was issued by the Federal District Court. The order was as follows:

> "Accordingly, the prayer for a temporary restraining order is granted; and it is ORDERED that the defendants refrain from ordering a return to tenants any and all payments of rent made in excess of the March 17, 1970 rent level."

As a result of the litigation in Federal Court the Board could not proceed to allow tenants to recover their overpayments. However, the Board was able to stay the Federal litigation and try the matter in the State Courts. However, to have the matter decided in the State Court the following agreement was made and accepted by Judge Coddar of the Superior Court:

> "The Rent Control Board of the City of Cambridge will not institute any hearings under regulation 45 nor institute any criminal complaint against any landlord who collected Corkery increases up to and including the entry of the final decree in The Rent Control Board of Cambridge v. Gifford, et al 2-7769 (September 1972) pending a determination of Harlow v. Lefkowitz, et al which is now pending in the Superior Court. The Rent Control Board will deny certificates of eviction in those cases dealing with tenants who have not paid the Corkery increases."

As of February 1974 the case of Harlow v. Lefkowitz, et al has not been decided.

On May 24, 1973 Judge Arthur Sherman decided the case of Harlow Properties

v. Rosenthal, et als. This case was the first court decision that gave authority to tenants to recover the Corkery increases. Judge Sherman's decree was as follows:

> "This cause came on to be heard and after argument it is ordered, adjudged and decreed:
>
> "1. The rental obligation of the Respondent Rosenthal to the petitioner from June 1971 to September 1972 was the sum of $150.00, being the maximum lawful rent chargeable by the petitioner under Chapter 842 of the Acts of 1970 (the roll back rent).
>
> "2. The petitioner was not entitled to receive a certificate of eviction from the Respondent Board at the time of its application.
>
> "3. The Respondent Board is hereby permanently enjoined from denying certificates of eviction for non-payment of rent in those instances where, pursuant to the terms of this decision, a tenant is entitled to reimbursement of rental adjustments granted by Administrator Corkery, the said tenant withholds an amount in excess of 10% of the total reimbursement due for any rental period.
>
> "4. The Respondent Board is hereby permanently enjoined from advising tenants that they have a right of reimbursement or set-off of Corkery adjustments for any rental period other than the right to set-off an amount equal to 10% of the total amount to which said tenant may be due under the terms of this decision, order, and decree."
>
> "5. The Respondent Board is hereby permanently enjoined from promulgating any rule or regulation concerning the right and manner of reimbursement or set-off of Corkery adjustments inconsistent with the right and manner of set-off set forth in this decision, order and decree."
>
> "6. The injunction set forth in paragraph four and five of this decree shall have no applicability where the relationship of landlord and tenant has terminated."

Pursuant to Judge Sherman's decision the following official notice was published:

> "Notice is hereby given that in the spirit of Judge Sherman's finding in the case of Harlow Properties, Inc. v. Virginia Rosenthal, et al., Third District Court of Eastern Middlesex, Equity #3 of 1973, that

"The Corkery adjustments being void, it appears that in some instances landlords may have been deprived of a fair net operating income to which they were entitled under the Act from the time they obtained a void adjustment from Corkery. We (the Court) are of the opinion that the petitioner and every other landlord similarly situated is entitled to a determination by the Board at this time as to the fair net operating income to be derived from the controlled premises at the time of the granting of the Corkery adjustment if the petitioner or any other landlord similarly situated should seek a determination of the same."

"the Rent Board will recompute the Corkery adjusted rent as follows:

"1.) Landlords requesting a re-determination of the Corkery rent must:

a.) Contact each tenant involved and propose a settlement to the tenants; and

b.) If the settlement is accomplished, submit a copy of the settlement to the Board; or

c.) If the settlement is not accomplished, submit a copy of the proposed settlement to the Board."

d.) If a settlement is accomplished then it shall be ratified automatically by the Rent Board if approved by the Executive Director.

e.) If no settlement is accomplished or if the Executive Director fails to approve a settlement then a fair rent shall be determined by the Rent Board staff subject to the approval by the Rent Board."

f.) The rent approved by the Rent Board, in any case, shall be approved only for the period of time commencing with the first rental period when the landlord was authorized to collect an adjusted rent and terminating on September 30, 1972. The Board shall reserve the right to make a determination in each case as to the date the landlord was authorized to collect an increase and the rent established as the maximum rent at that time."

"2.) Tenants requesting a re-determination of the Corkery rent must follow the same procedures outlined in 1(a-f) above."

"3.) The Rent Board staff shall determine the fair rent in accordance with the provisions of Regulation Series No. 72 of the Rent Board Regulations, except no hearing shall be held unless requested in writing by a party in interest when submitting a request for re-determination. The Executive Director shall determine if a person is a party in interest."

"4.) Reasonable estimates necessary to determine a fair rent shall be accepted for the purposes of applying the provisions of Regulation No. 72 as of the date of the Corkery hearing. In addition, if a fair rent has been determined under either Regulation Series No. 70 or Regulation Series No. 72 the Rent Board staff may reduce the present maximum rent by 6% to determine what would have been a fair rent during the period described in 1(f) above, provided that the percentage reduction shall be reasonable in the opinion of the Executive Director after taking into account all relevent factors. No hearing shall be conducted if a percentage reduction is made from the present rent."

"5.) Any re-determination of a Corkery adjusted rent shall not be less than the March 17, 1970 roll-back rent level nor greater than the amount of rent established by Corkery as the maximum rent."

Since the Board's last publication regarding Corkery increases the Board has been acting within the bounds of Judge Sherman's decision and the published policy.

(2) "<u>Steps taken on petitions for rent decreases for sub-standard housing conditions pursuant to Section 7b #4 through #6 of Chapter 842 of the Acts of 1970 and/or the case of the Boston Housing Authority v. Hemingway; 293 NE2d 831, with a report on the number of petitions filed, decided upon, and pending and an analysis of such categories</u>."

The present policy of the Rent Board is to disallow any increase granted by way of general adjustment if it is determined that a unit does not comply with minimum health and safety standards. Where an individual adjustment is sought no rent increase may be effective until all effected units comply with minimum health and safety standards. The Rent Board's regulations dealing with substandard housing are as follows:

34-06 Certificate of violations of the Health Codes by the Cambridge Department of Health and Hospitals shall be prima facie evidence of the existence or non-existence of Health Code Violation, rebuttable by other competent evidence.

34-07 Testimony by a party to the proceedings, or other evidence, including photographs, shall be admissible evidence to establish the existence or non-existence of violations of the Health Code.

34-08 Members of the Board or its employee, may personally view the alleged Code Violations if they deem it necessary to do so in the interest of justice and the fair application of these Regulations.

50-05 When used in these regulations, the term "substantial code violation" shall mean any housing condition the existence of which, in the Board's opinion, vilates Article II of the State Sanitary Code, or any other statute, ordinance or regulation relative to the condition of the residential premises, and may endanger or materially impair the health or safety and the well-being of any tenant or person occupying the property, including without limitation, the following conditions:

(a) insufficient water supply;
(b) insufficient heat or hot water;
(c) curtailment of service such as gas or electricity;
(d) defective electrical system;
(e) roof or wall leaks;
(f) defective or illegal incinerators;
(g) defective drains, sewage systems or toilet facilities;
(h) infestation of insects or rodents;
(i) lead paint on interior of dwelling or on exterior of dwelling where paint is so located or in such condition as to create a hazard of lead poisoning to the occupants;
(j) insufficient number of acceptable exists from a dwelling and each floor
(k) obstructed exits;
(l) accumulation of garbage and rubbish in common areas (hall, stairways, porches, etc.);
(m) plaster falling or in immediate danger of falling;
(n) dangerous porches, stairs or railings;
(o) floors, walls or ceilings with substantial holes;
(p) doors or windows not sufficiently weathertight:
    (1) to permit room temperature to be maintained at 68°F where the landlord supplies heat as part of the rent, or
    (2) to prevent substantial heat loss where the tenant pays for heat separately from the rent;
(q) doors lacking locks conforming to building code regulations;
(r) inadequate ventilation facilities in interior bathrooms.

51-01 No certificate of eviction shall be issued for non-payment of rent in any case in which:

(a) The tenant is withholding rent pursuant to MGL., C.239 Section 8a or pursuant to a Court order under MGL., C.111 Section 125F, et. seq.

51-04 No Eviction Certificate shall issued for failure to pay the full rent to which the landlord is otherwise entitled, where the tenant has reasonably and in good faith applied part of his rent for the making of necessary repairs, as provided in MGL. C.111, Section 127L, known as the "Right to Repair Law".

51-05 No tenant shall be deemed to have failed to pay the rent to which the landlord was entitled under Section 9(a)(1) of the Act, for any arrearages which the tenant in good faith believed he was not obligated to pay;...

61-01 Any of the following, if proved by the tenant, shall be a complete defense in an Eviction proceeding, and shall require that the landlord's petition be denied.

(d) That the unit has one or more substantial code violations as defined in Regulation 50-05.

70-08 The Board shall refuse to grant a rent increase if it determines that the affected rental unit does not comply substantially with the state sanitary code and any applicable municipal codes, ordinances or by-laws, and if it determines that such lack of compliance is due to the failure of the owner to provide normal and adequate repair and maintenance.

72-04 In determining Fair Net Operating Income the following adjustments shall be made for:

(d) Increases or decreases in living space, services or other amenities.

(e) Substantial deterioration of the controlled rental unit, other than as a result of ordinary wear and tear.

(f) Failure of the owner to perform ordinary repair, replacement and maintenance.

(g) Such other reasons as the Board may determine to be valid based upon the purposes and provisions of the Rent Control Act,

72-05 The Board shall refuse to grant any rent increase if it determines that the affected rental unit does not comply substantially or provision has not been made for immediate substantial compliance with the state sanitary code and applicable municipal codes, ordinances and by-laws, and if such failure of compliance is due to the failure of compliance is due to the failure of the owner to provide normal and adequate repair and maintenance.

The Board is presently considering adopting the following regulation:

72-08 Commencing March 1, 1974, if the Board determines that an owner knew or should reasonably have known at the time of filing a petition for a rent adjustment that any of the rental units within the building with respect to which such adjustment is sought did not comply with the requirements of Regulation 72-05, the Board may, in accordance with a Schedule published from time to time by the Board, adjust downward the fair rent of such units as did not comply for the period of such non-compliance and permit a retroactive credit, on a pro-rata basis, to be taken by the tenants who occupied such units during the period of such non-compliance. For the purposes of Regulation 72-08 only, an owner shall be deemed to have known of such non-compliance if the matters constituting non-compliance are such as would come to the attention of the owner in the normal course of managing the unit.

In addition to considering adopting Regulation 72-08 the Board is also considering adopting Regulation Series No. 75 which is a Regulation Series dealing with standard rental increases and decreases. A portion of the draft reads as follows:

75-02 Upon application to the Rent Board the Board may decrease the maximum lawful rent for a unit or units in accordance with the provision of this Regulation Series provided:

(a) That the application under this section conforms to the provision of Regulation Series No. 30;

(b) That if the application is filed by a tenant or tenants, the tenant or any of the tenants filing the application are not more than sixty days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of section eight A of Chapter two hundred thirty-nine of the General Laws or is under the provisions of the Rent Board's Regulations;

(c) That as a result of a fact finding hearing before an examiner the facts attested to in the application qualify the unit or units for a decrease in maximum rent;

75-07 The Rent Board may decrease the maximum lawful rent for a unit or units in accordance with the provisions of this Regulation series provided:

(b) That as a result of the fact finding hearing before a hearing examiner the examiner finds that the unit(s) has (have) one or more substantial code violations as defined in Regulation 50-05 which constitute a breach of the landlord's implied warranty of habitability and that such lack of compliance is due to the failure of the landlord to provide normal and adequate repair and maintenance.

(c) That the tenant or tenants have given oral or written notice to the landlord of the existance of the substantial code violation(s).

Both proposals, Regulation 72-08 and Regulation Series 75 require a Schedule of rent increases and decreases which is being prepared as fairly and accurately as possible.

From January 1973 through December 1973 537 individual rent adjustment petitions were filed. Of the 537 petitions 3737 units were involved in petitions filed by landlords and 1527 units were involved in petitions filed by tenants. 124 petitions were withdrawn. Most of the petitions withdrawn were originally filed by tenants. Usually the petitions were withdrawn because the matters were settled between the landlord and tenants by the Rent Board. Of the remaining 413 petitions filed all but 31 had hearings in 1973. Of the 31 cases awaiting hearings as of December 31,1973, 12 were based on landlord's petitions and 19 were based on tenants petitions. Of the 413 active petitions filed during the year 1973 250 cases were decided upon by the Board.

(3) "Steps taken to implement the Rent Board regulation series #45, giving tenants certain rights to seek triple damages in case of overcharges, with an analysis of all pending cases."

Regulation Series 45 is as follows:

45-01 Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent shall be liable to the person from whom such payment is demanded, accepted, received or retained in the amount of one hundred dollars, or not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could be lawfully demanded, accepted received or retained, whichever is greater. If, however, the person proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.

45-02 If as a result of any proceeding before the Board based on a complaint, an application for a Certificate of Eviction, or a Petition for Rent Adjustment, it appears that the provisions of Regulation No. 45-01 may have been violated, a separate hearing may be scheduled by the Board for the purpose of determining if such violation has occurred. The issue of overcharge may be raised by a tenant as a counterclaim in a proceeding in which he is a respondent, or it may be raised by the Board on its own motion. In no event shall the raising of such issue or the holding of such hearing interfere with or delay any petition for rent adjustment filed by the party as to whom a separate hearing hereunder is scheduled.

45-03 Any hearing scheduled pursuant to the provisions of Regulation No. 45-02 shall be conducted in accordance to to the provisions of Regulation Series Nos. 32 through 43.

45-04 The notice required by Regulation Series No. 32 shall be sent by regular mail, or as otherwise directed by the Board or the Executive Director, no less than 7 days prior to the hearing.

45-05 If it is determined as a result of a hearing in accordance with the provisions of Regulation No. 45-02 that a violation of Regulation No. 45-01 has occurred the Board shall credit to future payments of rent by the tenant or tenants involved, any damages assessed pursuant to Regulation Series 45.

45-06 If it is determined as a result of a hearing in accordance with the provisions of Regulation No- 45-02 that a violation of Regulation No. 45-01 has occurred the Board shall initiate criminal proceedings under Section 12 of the Act.

The Rent Board scheduled hearings pursuant to Regulation Series No. 45 in ten instances.

In three instances the matter was not pursued because of the Board's agreement approved by ~~Federal District Court~~ Judge Coddar mentioned earlier in this report in that portion dealing with the Corkery adjustments.

In two instances the Board was restrained by the Superior Court from holding the hearings.

In one instance the matter was resolved by a court proceeding which resulted in the tenants being awarded treble damages.

The other five cases have not been pursued by the Board with an application of Regulation Series No. 45 because in one of those instances dealing with property located at 178 Larch Road, Cambridge where the Board awarded damages pursuant to Regulation 45 the Court in Reilley v. Lefkowitz et al. No. 3386 of 1972 ruled that " the Board exceeded its authority under the provisions of Chapter 842 of the Acts of 1970 in assessing damages as against the petitioner in that they failed to follow the statuatory procedures explicitly set forth in section 11(b) by obtaining damages either by settlement or the institution of an action at law as contemplated by the Act. " A copy of the Court's decision is attached hereto.

(4) "Steps which can be taken to ensure less burdensome processing of petitions for rent adjustments from landlords owning less than six (6) units."

The Rent Board is of the opinion that its procedures should be as simple as possible without regard to the number of units owned by a particular landlord. In fact, any special treatment of landlords in consideration of the number of rental units owned would be open to an attack that others were being denied equal protection of the law and thus could possibly be unconstitutional.

The Board's forms are not difficult. Every landlord can obtain the assistance and counselling of a hearing examiner to make the process as simple as possible.

If Regulation Series 75 is adopted it will simplify matters by allowing for standard rental increases and decreases. Also, general adjustments can make the adjustment quite simple for landlords.

Respectfully submitted,

J. Kenneth Griffin
for the Rent Board

Effective Date of adjustment	Total increase granted on the effective date	Total number of buildings adjusted	Total units Adjusted	Total Corkery increase collectable from effective date through September 1972
March 1, 1971	$1,673.00	6	63	$31,787.00
April 1, 1971	8,147.00	33	340	146,646.00
May 1, 1971	22,112.00	78	678	375,904.00
June	21,103.00	63	799	337,648.00
July 1, 1971	20,546.00	75	781	308,190.00
August 1, 1971	31,300.00	80	884	438,200.00
December 1, 1971*	21,070.00	55	704	210,700.00
February 1, 1972**	8,402.00	35	315	67,216.00
Totals	$134,353.00	425	4564	$1,916,291.00

*No adjustments were effective for collection for the months of September, October and November because of Phase I of the price freeze.

** Adjustments made in December 1971 were effective for collection for February 1, 1972. No adjustments were granted by the Corkery Administration after December, 1971.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

THIRD DISTRICT COURT
OF EASTERN MIDDLESEX
NO. 3386 of 1972

FRANCIS J. REILLEY

VS

ALAN L. LEFKOWITZ, et als

FINDINGS, RULINGS AND DECREE

This is a Petition for a Judicial Review brought by Francis J. Reilley as owner of the premises known 178 Larch Road, Cambridge, Massachusetts against the Respondent, Bonnie D. Blanchard a tenant at will residing at said premises and the Respondents, Alan L. Lefkowitz, et als as they comprise the members of the Cambridge Rent Control Board.

The premises at 178 Larch Road comprise two apartments both of which were occupied in January of 1972. The apartment located on the first floor of said premises had a controlled rent of $140.00 per month under the provisions of Chapter 842 of the Acts of 1970 while the second floor apartment occupied by the Respondent, Blanchard had a controlled rent of $200.00 per month.

In mid January of 1972 the first floor apartment became vacant and the petitioner was requested by the Respondent, Blanchard to change apartments for the purpose of lowering her rent. It is the petitioners contention that he created a new tenancy with the Respondent, Blanchard for said first floor apartment in mid January of 1972 and charged her the sum of $70.00 for one half month rent and further granted her an allowance of $45.00 for renovations to said premises which the Respondent, Blanchard desired. The Respondent, Blanchard maintains that the petitioner was desirous of obtaining rental of $165.00 per month (being $25.00 in excess of the maximum legal rent for said unit) and denies the allowance arrangement described above.

In June of 1972 the petitioner filed a request with the Cambridge Rent Control Board for a certificate

of eviction pursuant to the provisions of section 9(a)(8) of Chapter 842 of the Acts of 1970 seeking said certificate for the avowed purpose of recovering "possession in good faith for use and occupancy of ..." his daughter who had expressed her intention of leaving home while attending college.

On July 31, 1972 the petitioner was informed that his application for certificate of eviction had been denied for the reason "the required good faith required by section 9(a)(8) ... was not established." Thereafter by letter dated July 31, 1972 the Respondent board assessed damages against the petitioner in the amount of $100.00 for "unlawfully demanding rent in excess of the maximum lawful rent" in violation of law, and further ordered that the $100.00 assessment be paid directly to the Respondent, Blanchard or in the alternative granting the Respondent, Blanchard the right to credit the $100.00 as against future rent payments. This action was taken by the board as a result of its interpretation of its authority under section 11(b) of said Chapter 842.

The two issues to be determined by this Court are as follows:

1. Did the Respondent board err in determining that the petitioner lacked the required "good faith" required by section 9(a)(8)?

2. Did the Respondent board have authority to assess damages against the petitioner pursuant to provisions of section 11(b) of said Chapter 842?

Sections 10 of said Chapter 842 grants to any person aggrieved by any "action, regualtion or order of the board" the right to file a complaint against the board in a District Court within the territorial jurisdiction where in the controlled rental unit is located." The District Court is then granted exclusive original jurisdiction over such proceedings and is authorized to take action with respect thereto as is provided in a case of the Superior Court under the provisions of General Laws, Chapter 231A. Inasmuch as the provisions of said Chapter 842 is silent as to the type of hearing to be held by the District Court upon complaint of an aggrieved party and further inasmuch as this court does not have the benefit of reviewing a written record of the proceedings of the board for the purposes of ascertaining the method by which its decision was made, the petitioner was in fact granted de novo hearing by this Court. The petitioner reasserted the fact that his daughter had graduated from high school in 1972 and that at the time of his original application and now he still

desires the apartment for her use and occupancy. The Respondent, Blanchard would have us believe that the petitioner was disgruntled as a result of the fact that the Respondent, Blanchard would not agree to pay $165.00 per month for a "controlled unit" which had a maximum assigned of $140.00. I do not so find.

Section 11 of Chapter 842 provides in part as follows:

> (a) Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this act or any regulation or order hereunder promulgated, shall be liable as hereinafter provided to the person from whom such payment is demanded, accepted, received or retained, or to the municipality for reasonable attorney's fees and costs as determined by the Court, plus liquidated damages in the amount of one hundred dollars, or not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could be lawfully demanded, accepted, received or retained, whichever is the greater; provided that if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.
>
> (b) If the person from whom such payment is demanded, accepted, received or retained in violation of the provisions of this act or any rule or regulation hereunder promulgated fails to bring an action (emphasis supplied) under this section within thirty days from the date of the occurrence of the violation, the board or the administrator may either settle the claim arising out of the violation or bring such action (emphasis supplied). Settlement by the board or the administrator shall thereafter bar any other person from bringing action (emphasis supplied) for the violation or violations with regard to which a settlement has been reached. If the board or the administrator settles said claims, it shall be entitled to retain the costs it incurred in the settlement thereof, and the person against whom the violation was committed shall be entitled to the remainder.

> If the board or the administrator brings action (emphasis supplied) under the provisions of this section, it shall be entitled to receive attorneys fees and costs under the provisions of paragraph (a) and the person against whom the violation was committed shall be awarded liquidated damages under said paragraph (a).

There was no evidence that the board or the administrator either settled the claim arising out of the alleged violation or brought any action in the District Court for any such recovery.

It is the opinion of this Court that the petitioner has sustained his burden in establishing the fact that it was his desire, and is still his desire to obtain the premises in question for the use and occupancy of his daughter, all in good faith.

It is further the opinion of this Court that the Board exceeded its authority under the provisions of Chapter 842 of the Acts of 1970 in assessing damages as against the petitioner in that they failed to follow the statuatory procedures explicitly set forth in section 11(b) by obtaining damages either by settlement or the institution of an action at law as contemplated by the Act.

It is therefore ORDERED, ADJUDGED AND DECREED:

1. The petitioner sought to recover possession of the subject premises in good faith for the use and occupancy of his daughter.

2. The Respondents as they comprise the Cambridge Rent Control Board exceeded their authority in assessing damages against the petitioner as set forth in their letter of July 31, 1972 in that they failed to adhere to the provisions of section 11(b) of Chapter 842 of the Acts of 1970.

3. The Respondent, Blanchard is indebted to the petitioner in the amount of $100.00 together with interest from August 1972 and in connection therewith a judgment shall be entered against her and execution issued therefor without interest.

4. The Respondents, Alan L. Lefkowitz, Alfred Cohn, Lorraine Williams, Paul Newman and Paul Watkins as they comprise the Cambridge Rent Control Board be and hereby are ordered to issue a certificate of eviction to the petitioner pursuant to provisions of section 9 (a)(8).

5. Court costs are to be awarded to the petitioner but no assessment is to be made of counsel fees inasmuch as no evidence was introduced to establish the fair value of the services rendered in connection with this matter.

6. In the event that the said promises should fail to be used by the landlord's daughter or any other person described in section 9(a)(8), then said premises shall be rented by the petitioner at not more than the maximum rental for said rental unit as established by the Rent Control Board of the City of Cambridge.

2 APRIL 1973

/s/ Arthur Sherman
JUSTICE

City of Cambridge

6. 110

Memorandum addressed to the members of the City Council from J. Kenneth Giffin, Exec. Dir. of the Rent Control, relative to requests for information made by the City Council at its meeting of February 14, 1974.

In City Council,

March 18, 1974

3/18/74
Placed on File-